

# SWiM PAY PTY LTD - Terms & Conditions

## 1. Why you should read this Agreement

**1.1 What this Agreement covers.** These are the terms and conditions on which we provide our Services to you.

**1.2 Why you should read them.** Please read this Agreement carefully before you start to use our Services. This Agreement (always together with the documents referred to in it) tells you who we are, how we will provide the Services to you, how this Agreement may be changed or ended, what to do if there is a problem and other important information. If you think that there is a mistake in this Agreement or require any changes, please contact us to discuss.

**1.3 Other additional documents which apply to you.** This Agreement refers to the following additional documents, which also apply to your use of our Services:

- (a) Our [Privacy Policy](#), which sets out the terms on which we process any personal data we collect about you, or that you provide to us. By using our Services, you consent to such processing and you promise that all data provided by you is accurate.
- (b) Our [Cookie Policy](#), which sets out information about the "cookies" on our website.
- (c) Our [Anti-Spam Policy](#), which sets out information about how commercial emails are handled by our business.

**1.4 Future changes to this Agreement.** All future changes at the time you sign-up for our Services are incorporated into this Agreement. The revised Agreement will take effect as soon as it is posted on our website or on the date notified to you.

**1.5 You accept this Agreement.** By visiting our website and/or using our Services you confirm that you accept and agree to this Agreement (including the Customer Updates and the additional documents referred to above). If you do not agree, please do not use our Services.

By accessing and using the SWiM Pay website (the "Website") you acknowledge that you have read, understood and agree to be bound by these Terms of Use (the "Terms"). Please make time to check these Terms periodically as continued use of the Website will constitute your agreement to any amendments to these Terms.

**1.6 Where to get a copy of this Agreement.** You can always see the most current version of this Agreement on our Website, which you can view, download or print.

## 2. General Terms

This Website is operated and owned by SWiM PAY PTY LTD (hereinafter referred to as SWiM PAY), a company incorporated in Australia under ACN No. 638 920 902 whose registered office is at 22/604 City Road, South Melbourne, Victoria 3205 AUSTRALIA

SWiM PAY users and clients expressly acknowledge and agree that:

- 2.1 The information contained in the Website is for informational purposes only and does not constitute financial or investment advice. SWiM PAY shall use its reasonable endeavours to ensure that any information on the Website is obtained from reputable sources and has been prepared in good faith and with reasonable care. SWiM PAY will not accept any liability for the use or interpretation of such information. It shall be your own responsibility to ensure that any products, services or information available through this Website meet your specific requirements.
- 2.2 Neither we nor any third parties provide any warranty or guarantee as to the accuracy, timeliness, performance, completeness or suitability of the information and materials found or offered on this Website for any particular purpose. You acknowledge that such information and materials may contain inaccuracies or errors and we expressly exclude liability for any such inaccuracies or errors to the fullest extent permitted by law.
- 2.3 This Website contains material which is owned by or licensed to us. This material includes, but is not limited to, the design, layout, look, appearance, graphics and copy. Reproduction is prohibited without obtaining prior written permission from SWiM PAY.
- 2.4 From time to time this Website may also include links to other websites. These links are provided for your convenience to provide further information only. They do not signify that we endorse the website(s) and we have no responsibility for the content of the linked website(s).
- 2.5 By accessing and/or using SWiM PAY, you expressly acknowledge and represent that you have carefully read, understood and accepted the Terms in its entirety as a legally binding agreement between yourself and the Company. You should immediately stop accessing and/or using SWiM PAY if you do not accept the Terms.
- 2.6 The Company may, from time to time, amend, restate or supplement the Terms (including the Fees) at the sole discretion of the Company, including to take into account future developments such as changes in industry trends and/or any changes in legal and/or regulatory requirements applicable to the Company.
- 2.7 In accessing and/or using SWiM PAY and/or the Services, you agree that it is your sole responsibility to ensure your compliance with the following at all times:
  - A. the Terms; and
  - B. any applicable laws and regulations.
- 2.8 For clients in the Asia-Pacific region, all payment services accessed via SWiM PAY's web application are provided **in Singapore** by Nium Pte. Ltd., **a company registered in Singapore** (UEN 201422465R), **and a major payment institution licensed by the Monetary Authority of Singapore** (hereinafter referred to as "Nium"). This does not constitute or form part of an offer, solicitation, or advertisement of Nium's services to any person outside Singapore.

2.9 In the United Kingdom payment services for SWiM PAY PTY Ltd are provided by Nium Fintech Limited, an Electronic Money Institution authorised and regulated by the Financial Conduct Authority with FRN 901024. Registered address Floor 3 18 St. Swithin's Lane, London, England, EC4N 8AD.

2.10 In the European Economic Area, payment services for SWiM PAY PTY Ltd are provided by UAB Nium EU, an Electronic Money Institution (License No. 14) regulated by Lietuvos Bankas (Bank of Lithuania). Registered address Konstitucijos pr. 21B, LT-08130, Vilnius.

2.11 In the United States of America, SWiM PAY USA INCOPORATED is “powered by Nium. Nium’s Program is sponsored by CFSB to which Nium is a service provider”.

2.12 You also agree to abide by Nium's terms and conditions, which are attached to our online Corporate Onboarding form, as part of these SWiM PAY Terms and Conditions.

2.13 SWiM PAY is a platform partner of Nium and **is not licensed, nor exempt to provide** payment, electronic money, or foreign exchange services of any kind.

2.14 These Terms are governed by and interpreted in accordance with the laws of Victoria, Australia.

### **3. Changes to Your Business**

You agree to keep the information in your SWiM PAY Account current. You must promptly update your SWiM PAY Account with any changes affecting you, the nature of your business activities, your Representatives, beneficial owners, principals, or any other pertinent information. We may suspend your SWiM PAY Account or terminate this Agreement if you fail to keep this information current.

You also agree to promptly notify us in writing no more than three days after any of the

following occur: you are the subject of any voluntary or involuntary insolvency petition or proceeding, receivership, bankruptcy, or similar action; there is an adverse change in your financial condition; there is a planned or anticipated liquidation or substantial change in the basic nature of your business; you transfer or sell 25% or more of your total assets, or there is any change in the control or ownership of your business or parent entity; or you receive a judgment, writ or warrant of attachment or execution, or levy against 25% or more of your total assets.

### **4. Fees & Fines**

SWiM PAY will provide the Services to you at the rates and for the fees (“Fees”) described in the Fee Schedule on our website, incorporated into this Agreement. The Fees include charges for Transactions (such as processing a payment) and for other events connected with your SWiM PAY Account (such as handling a disputed charge). We may revise the Fees at any time upon 30 days’ notice to you. We may charge additional Fees for cross-border transactions or foreign exchange services. In addition to the Fees, you are also responsible for any penalties or fines imposed on you or SWiM PAY by any bank, money services business, payment network,

or other financial intermediary (each a “Financial Services Provider”) resulting from your use of Payment Services in a manner not permitted by this Agreement or a Financial Services Provider’s rules and regulations.

You are also obligated to pay all taxes, fees and other charges imposed by any governmental authority (“Taxes”), including without limitation any value added tax, goods and services tax, provincial sales tax and/or harmonized sales tax on the Services provided under this Agreement. If you are tax-exempt, you will provide us with an appropriate certificate or other evidence of tax exemption that is satisfactory to us.

## **5. Suspension for Unauthorised or Illegal Use**

We may refuse, condition, or suspend any Transactions that we believe may violate this Agreement or other agreements you may have with SWiM PAY; or that expose you, SWiM PAY, or others to risks unacceptable to SWiM PAY. If we suspect or know that you are using or have used the Services for unauthorised, fraudulent, or illegal purposes, we may share any information related to such activity with the appropriate financial institution, regulatory authority, or law enforcement agency consistent with our legal obligations. This information may include information about you, your SWiM PAY Account, your customers, and Transactions made through your use of the Services.

## **6. Data Protection & Privacy**

**6.1. Confidentiality:** SWiM PAY will only use User Data as permitted by this Agreement, by other agreements between you and us, or as otherwise directed by you. You will protect all Data you receive through the Services, and you may not disclose or distribute any such Data, and you will only use such Data in conjunction with the Services and as permitted by this Agreement or by other agreements between you and us. Neither party may use any Personal Data to market to Customers unless it has received the express consent from a specific Customer to do so. You may not disclose Payment Data to others except in connection with processing Transactions requested by Customers and consistent with applicable Laws and Network Rules.

**6.2. Privacy:** Protection of Personal Data is very important to us. Our [Privacy Policy](#) explains how and for what purposes we collect, use, retain, disclose, and safeguard the Personal Data you provide to us. You agree to review the terms of our Privacy Policy, which we update from time to time.

If we become aware of an unauthorized acquisition, disclosure or loss of Customer Personal Data on our systems, we will notify you consistent with our obligations under applicable Law. We will also notify you and provide you sufficient information regarding the unauthorized acquisition, disclosure or loss to help you mitigate any negative impact on the Customer.

**6.3. Data Transfers.** We may disclose your Personal Information (as that term is defined in the Australian Privacy Act 1988 (Cth)) to our related entities or third parties located in

countries where the laws on the collection, use and disclosure of Personal Information are less stringent or protective than Australia.

**6.4. Emails.** By agreeing to these Terms & Conditions you specifically “opt in” and give us express permission to send you business related emails regarding your account with SWiM PAY. You may opt out at any time by cancelling your account with SWiM PAY and we shall not send you any further emails after confirming your cancellation.

## **7. Dispute Resolution: Agreement to Arbitrate**

**7.1. Binding Arbitration:** Any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

This Agreement and the rights of the parties hereunder shall be governed and construed in accordance with the laws of England and Wales, exclusive of conflict or choice of law rules. Nothing in this paragraph will preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

**7.2. Service of Process:** Each party hereby irrevocably and unconditionally consents to service of process through personal service at their corporate headquarters, registered address, or primary address (for individuals or sole proprietors). Nothing in this Agreement will affect the right of any party to serve process in any other manner permitted by Law.

**7.3. Class Waiver:** To the fullest extent permitted by Law, each of the parties agrees that any dispute arising out of or in connection with this Agreement, whether in arbitration or in court, will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason the claim or dispute proceeds in court rather than through arbitration, each party knowingly and irrevocably waives any right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated between the parties.

**7.4. Provision of an Award:** Subject to the limitations of liability identified in this Agreement, the appointed arbitrators may award monetary damages and any other remedies allowed by Law. In making a determination, the arbitrator will not have the authority to modify any term or provision of this Agreement. The arbitrator will deliver a reasoned written decision with respect to the dispute (the “Award”) to each party, who will promptly act in accordance with the Award. Any Award (including interim or final remedies) may be confirmed in or enforced by any court having jurisdiction over either party or its assets. The decision of the arbitrator will be final and binding on the parties, and will not be subject to appeal or review.

**7.5. Fees:** Each party will advance one-half of the fees and expenses of the arbitrator, the costs of the attendance of the court reporter at the arbitration hearing, and the costs of the arbitration facility. In any arbitration arising out of or related to this Agreement, the arbitrator will award to the prevailing party, if any, the costs and attorneys’ fees reasonably incurred by

the prevailing party in connection with those aspects of its claims or defenses on which it prevails, and any opposing awards of costs and attorneys' fees awards will be offset.

**7.6. Confidentiality:** The parties will maintain the confidential nature of the arbitration proceeding, the hearing and the Award, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, or confirmation of an Award or its enforcement, or unless otherwise required by applicable Laws. The parties, witnesses, and arbitrator will treat as confidential and will not disclose to any third person (other than witnesses or experts) any documentary or other evidence produced in any arbitration hereunder, except as required by Law or except if such evidence was obtained from the public domain or was otherwise obtained independently from the arbitration.

## **8. Assignment**

8.1. The Company may, at any time, assign, mortgage, charge or otherwise transfer any or all of our rights and obligations under the Terms without restriction.

8.2. You may not assign, mortgage, charge or otherwise transfer any of your rights and obligations under the Terms (including the licence granted to you under paragraph 94 above) without the prior written consent of the Company and any attempted assignment mortgage, charge or otherwise transfer in violation of the Terms shall be null and void.

## **9. Right to Audit**

If we believe that a security breach, leak, loss, or compromise of Data has occurred on your systems, website, or app affecting your compliance with this Agreement, we may require you to permit a third-party auditor approved by us to conduct a security audit of your systems and facilities. The auditor will issue a report to us and our Financial Services Providers.

## **10. Force Majeure**

Neither party will be liable for any delays in processing or other nonperformance caused by telecommunications, utility, failures, or equipment failures; labor strife, riots, war, or terrorist attacks; nonperformance of our vendors or suppliers, fires or acts of nature; or any other event over which the respective party has no reasonable control. However, nothing in this section will affect or excuse your liabilities or your obligation to pay Fees, Fines, Disputes, Reversals, or Returns under this Agreement.

## **11. Your Liability for Third Party Claims Against Us**

You agree to defend SWiM PAY against any claim, suit, demand, loss, liability, damage, action, or proceeding (each, a "Claim") brought by a third party against SWiM PAY, and you agree to fully reimburse SWiM PAY for any Claims that result from: (i) your breach of any provision of this Agreement; (ii) any Fees, Fines, Disputes, Reversals, Returns, or any other liability we incur that results from your use of our Services; (iii) negligent or willful misconduct of your employees, contractors, or agents; or (iv) contractual or other relationships between you or your customers.

**Important Note for Individual Traders:** If you are using our Services as a sole proprietor, please keep in mind that the Law and the terms of this Agreement consider you and your business to be legally one and the same. You are personally responsible and liable for your use of the Services, payment of Fees, Reversals, Fines, losses based on Disputes or fraud, or for any other amounts you owe under this Agreement for your failure to use Security Controls, and for all other obligations to us and to your customers. You risk personal financial loss if you fail to pay any amounts owed. Please take the time to read our Documentation and take any measures appropriate to protect against such losses.

## **12. Representations and Warranties**

By accepting the terms of this Agreement, you represent and warrant that: (a) you are eligible to register and use the Services and have the authority to execute and perform the obligations required by this Agreement; (b) any information you provide us about your business, products, or services is accurate and complete; (c) any Charges represent a Transaction for permitted products, services, or donations, and any related information accurately describes the Transaction; (d) you will comply with all Laws applicable to your business and use of the Services; (e) you will not use our Services for household purposes or peer-to-peer money transmission, or (except in the normal course of business) intercompany Transactions; and (f) you will not use the Service, directly or indirectly, for any fraudulent or illegal undertaking, or to interfere in any manner with the normal operation of the Service.

## **13. No Warranties**

WE PROVIDE THE SERVICES AND SWIM PAY IP “AS IS” AND “AS AVAILABLE”, WITHOUT ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ANY OTHER TYPE OF WARRANTY OR GUARANTEE. NO DATA, DOCUMENTATION OR ANY OTHER INFORMATION PROVIDED BY SWIM PAY OR OBTAINED BY YOU FROM OR THROUGH THE SERVICES — WHETHER FROM SWIM PAY OR ANOTHER SWIM PAY ENTITY, AND WHETHER ORAL OR WRITTEN — CREATES OR IMPLIES ANY WARRANTY FROM A SWIM PAY ENTITY TO YOU.

YOU AFFIRM THAT NO SWIM PAY ENTITY CONTROLS THE PRODUCTS OR SERVICES THAT YOU OFFER OR SELL. YOU UNDERSTAND THAT WE CANNOT GUARANTEE AND WE DISCLAIM ANY KNOWLEDGE THAT YOUR CUSTOMERS POSSESS THE AUTHORITY TO, OR WILL COMPLETE ANY TRANSACTION.

SWIM PAY DISCLAIMS ANY KNOWLEDGE OF, AND DO NOT GUARANTEE: (a) THE ACCURACY, RELIABILITY, OR CORRECTNESS OF ANY DATA PROVIDED THROUGH THE SERVICES; (b) THAT THE SERVICES WILL MEET YOUR SPECIFIC BUSINESS NEEDS OR REQUIREMENTS; (c) THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, OR WILL FUNCTION IN AN UNINTERRUPTED MANNER OR BE SECURE; (d) THAT SWIM PAY WILL CORRECT ANY DEFECTS OR ERRORS IN THE SERVICE, DOCUMENTATION, OR DATA; OR (e) THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL CODE. USE OF DATA YOU ACCESS OR DOWNLOAD THROUGH THE SERVICES IS DONE AT YOUR OWN RISK — YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY, LOSS OF DATA, OR ANY OTHER LOSS THAT RESULTS FROM

SUCH ACCESS OR DOWNLOAD. YOU UNDERSTAND THAT SWiM PAY MAKES NO GUARANTEES TO YOU REGARDING TRANSACTION PROCESSING TIMES OR PAYOUT SCHEDULES.

NOTHING IN THIS AGREEMENT OPERATES TO EXCLUDE, RESTRICT OR MODIFY THE APPLICATION OF ANY IMPLIED CONDITION, WARRANTY OR GUARANTEE, OR THE EXERCISE OF ANY RIGHT OR REMEDY, OR THE IMPOSITION OF ANY LIABILITY UNDER LAW WHERE TO DO SO WOULD: (A) CONTRAVENE THAT LAW; OR (B) CAUSE ANY TERM OF THIS AGREEMENT TO BE VOID.

#### **14. Limitation of Liability**

Under no circumstances will SWiM PAY be responsible or liable to you for any indirect, punitive, incidental, special, consequential, or exemplary damages resulting from your use or inability to use the Services or for the unavailability of the Services, for lost profits, personal injury, or property damage, or for any other damages arising out of, in connection with, or relating to this Agreement or your use of the Services, even if such damages are foreseeable, and whether or not you or SWiM PAY have been advised of the possibility of such damages. The SWiM PAY Entities are not liable, and deny responsibility for any damages, harm, or losses to you arising from or relating to hacking, tampering, or other unauthorised access or use of the Services, your SWiM PAY Account, or Data, or your failure to use or implement anti-fraud measures, the Security Controls, or any other data security measure. SWiM PAY further deny responsibility for all liability and damages to you or others caused by (a) your access or use of the Services inconsistent with the Documentation; (b) any unauthorised access of servers, infrastructure, or Data used in connection with the Services; (c) interruptions or cessation of the Services; (d) any bugs, viruses, or other harmful code that may be transmitted to or through the Services; (e) any errors, inaccuracies, omissions, or losses in or to any Data provided to us; (f) third-party content provided by you; or (g) the defamatory, offensive, or illegal conduct of others.

You agree to limit any additional liability not disclaimed or denied by the SWiM PAY Entities under this Agreement to your direct and documented damages; and you further agree that under no circumstances will any such liability exceed in the aggregate the amount of Fees paid by you to SWiM PAY during the three-month period immediately preceding the event that gave rise to your claim for damages – or US\$10,000.00 – whichever is the lesser.

These limitations on our liability to you will apply regardless of the legal theory on which your claim is based, including contract, tort (including negligence), strict liability, or any other theory or basis.

The Company, its directors, officers, employees, representatives and agents (each a "Relevant Person") shall not, save for any willful default or fraud on the part of any Relevant Person, be liable to you for any Losses arising from or in connection with, or anything done or not done as a direct or indirect consequence to, the provision of SWiM PAY and/or the Services (whether in whole or in part), including any one or more of the following:

(a). any failure, error, delay or malfunction of SWiM PAY, howsoever caused and whether or not identified or identifiable;



- (b). the access to, use of or inability to use SWiM PAY;
- (c). the access to, use of or inability to use any third-party services that may be accessed through or used on SWiM PAY;
- (d). anything done or omitted to be done in the course of, or in connection with the discharge or purported discharge of the obligations and/or rights of the Company under any applicable laws and regulations or in accordance with the Terms;
- (e). the exercise of the discretion of the Company under the Terms;
- (f). any failure, error, delay or malfunction of the provision of any services (whether in whole or in part) by any service provider engaged by the Company;
- (g). the termination of the services (whether in whole or in part) provided by any service provider engaged by the Company (whether in whole or in part and whether at the election of such service provider or otherwise) that allows the Company to provide SWiM PAY and/or the Services;
- (h). any virus or other disruptive, destructive, malicious or corrupting program, code, agent, script or macro;
- (i). the originality, accuracy, adequacy, timeliness or completeness of SWiM PAY and/or any Platform Materials (collectively, the "Content");
- (j). any reliance by you on the Content or any part thereof;
- (k). any information transmitted or received through SWiM PAY, or the interception of or access to such information by any unauthorised person;
- (l). any event, occurrence, or circumstance beyond the reasonable control of the Company, including any act of God, civil commotion, riot, act of war or terrorism, strike, government action, accident or equipment or transmission failure;
- (m). the provision of SWiM PAY and/or the Services.

In any event, any liability accruing to SWiM PAY, any SWiM PAY Entity or any Relevant Person shall not exceed US\$10,000.00 as an absolute maximum.

## **15. Entire Agreement**

This Agreement and all policies and procedures that are incorporated by reference constitute the entire agreement between you and SWiM PAY for provision and use of the Services. Except where expressly stated otherwise in writing executed between you and SWiM PAY, this Agreement will prevail over any conflicting policy or agreement for the provision or use of the Services. This Agreement sets forth your exclusive remedies with respect to the Services. If any provision or portion of this Agreement is held to be invalid or unenforceable under Law, then it will be reformed and interpreted to accomplish the objectives of such provision to the greatest extent possible, and all remaining provisions will continue in full force and effect.

## **16. Responsibility for Your Account or Sub-Account**

16.1. You acknowledge and agree that you shall be solely responsible for your Account or Sub-Account (as the case may be), provided always that the owner of an Account shall be ultimately responsible for the compliance of all related Sub-Account(s) and their respective user(s) with the Terms at all times.

16.2. Your Account and/or Sub-Account(s) can only be used by you and/or your authorised representative(s) (as the case may be) and you acknowledge and agree that you shall be fully liable at all times for any communication, transaction, instruction and/or operation made or performed, processed or effected through your Account and any Sub-Account (each an "Instruction") by you or any person purporting to be you, acting on your behalf or purportedly acting on your behalf, with or without your consent.

16.3. You must immediately notify the Company if you suspect or become aware of the use of your Account and/or any Sub-Account by any person or other entity other than yourself and your authorised representatives.

16.4. Without prejudice to any other provision of the Terms, you authorise the Company to act upon any Instruction (though the Company is not obliged to) which the Company believes was given by you (whether through your Account or otherwise).

16.5. Any Instruction shall not be considered to have been received by the Company until it has actually been received successfully by the Company (whether electronically or otherwise).

16.6. The Company shall not be responsible for confirming and/or verifying any Instruction or for monitoring or refusing to process any duplicate Instructions.

16.7. You acknowledge and agree that any records created and maintained by the Company of Instructions by you or any person purporting to be you, acting on your behalf or purportedly acting on your behalf, with or without your consent, shall be binding on you for all purposes and shall be conclusive evidence of such Instructions.

16.8. You acknowledge and agree that the Company may, at its sole discretion, refuse to act or defer acting upon any Instruction.

## **17. Intellectual Property**

17.1. The Company and its licensor(s) (if any) reserve and retains all rights (including copyrights, trademarks, patents as well as any other intellectual property right) in relation to the products, services and all content and data contained in or provided on or via SWiM PAY and/or the Platform Materials (including all texts, graphics and logos).

17.2. You may not do anything that will violate or infringe such intellectual property rights and, in particular, you shall not copy, download, publish, distribute, transmit, disseminate, sell, broadcast, circulate, exploit (whether for commercial benefit or otherwise) or reproduce any of the information or content contained in or provided on or via SWiM PAY and/or the

Platform Materials in any form without the prior written permission of the Company and/or its licensor(s) (as the case may be).

17.3. No part or parts of SWiM PAY and/or any Platform Materials may be reproduced, distributed, republished, displayed, broadcast, hyperlinked, mirrored, framed, transferred or transmitted in any manner or by any means or stored in an information retrieval system without the prior written permission of the Company and/or its licensor(s) (as the case may be).

17.4. Subject to any other applicable terms, guidelines, notices, rules and policies, the Company grants you a non-transferable, non-exclusive, revocable, limited licence to use and access SWiM PAY and the Platform Materials, provided that you do not modify any Platform Materials.

17.5. Save as expressly provided otherwise in the Terms, you acknowledge that you are not granted any licence, interest or right by virtue of your use of or access to SWiM PAY and/or the Platform Materials.

## **18. Indemnity by User**

You (the User) expressly agree to indemnify, defend, save and hold harmless all SWiM Pay entities and Relevant Persons from all liabilities, claims and Losses arising out of or in connection with:

- (a). your Account and/or Sub-Account(s);
- (b). the access and use of SWiM Pay;
- (c). the access and use of the Services;
- (d). any breach by you of the Terms;
- (e). any negligent act and/or omission by you in connection with SWiM Pay and/or the Terms, other than through the willful default or fraud by the Relevant Person.

## **19. Severability**

If any provision of the Terms or part thereof is rendered void, invalid, illegal or unenforceable by any legislation to which it is subject or by a decision of a court of competent jurisdiction ("**Affected Provision**"), the Affected Provision shall be rendered void, invalid, illegal or unenforceable only to that extent and it shall in no way affect or prejudice the enforceability of the remainder of the Affected Provision or the other provisions of the Terms.

## **20. No Waiver**

No failure or delay to exercise or enforce any right conferred upon the Company under the Terms shall be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

Any waiver of any right arising from a breach or non-performance of the Terms or arising upon default under the Terms granted to you shall be null and void unless made in writing and signed by the Company.

**21. English to Prevail**

If the Terms are translated into a language other than the English language and there is any conflict or inconsistency between such translation and the English text, the English text shall prevail.

## 22. No Rights for Third Parties

22.1. Save for SWiM Pay or a Relevant Person(s), no person or entity who is not a party to the Terms shall have any right under the contract Acts of England, Wales or other similar laws to enforce the Terms or any part thereof, regardless of whether such person or entity has been identified by name, as a member of a class or as answering a particular description.

22.2. For the avoidance of doubt, any amendments to the Terms in accordance with the provisions herein shall not require any consent from any person or entity (including any Relevant Person) who is not a party to the Terms.

## 23. You Must Keep Your Account Safe

**(i) What to do.** You must:

(a) Change your password regularly and ensure that it isn't reused across other online accounts.

(b) Contact Customer Support if anyone asks for your password.

(c) Always follow recommended password management practice for example: <https://support.google.com/accounts/answer/32040?hl=en>.

(d) Set up 2-step MFA authentication when prompted

(e) Keep your e-mail account secure. You may reset your Account password using your email address. Let Customer Support know immediately if your email address becomes compromised.

**(ii) What NOT to do.** You must NOT:

(a) Disclose your Account password or your customer reference. Keep them safe.

(b) Let anyone access your Account or watch you accessing it.

(c) Use any functionality that allows your login details or passwords to be stored by the computer or browser you are using or to be cached or otherwise recorded.

(d) Do anything which may in any way avoid or compromise the 2-step authentication process.

**Contact us if you suspect your Account has been compromised.** If you suspect your SWiM PAY Account or other security credentials are stolen, lost, used without your authorisation or otherwise compromised, you must contact Customer Support immediately, you are also advised to change your password. Any undue delays in notifying us may affect the security of your SWiM PAY Account and also result in you being responsible for financial losses.

## **24. Our Responsibility for Loss or Damage to You**

**24.1 We are responsible to you for foreseeable loss and damage caused by us.** If we do not reasonably meet our commitments to you, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill. We are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during your account sign up process.

**24.2 We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation.

**24.3 We are not liable for business losses.** If you use our Services for any commercial or business purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

**24.4 We are not liable for technological attacks.** We will not be liable for any loss or damage caused by a virus, or other technological attacks or harmful material that may infect your computer equipment, computer programmes, data or other proprietary material related to your use of our Services.

**24.5 We have no control over websites linked to and from our website.** We assume no responsibility for their content or any loss or damage that may arise from your use of them.

**24.6 Our liability to you for unauthorised payments or our mistake.** In case of an unauthorised payment or mistake due to our error, we shall at your request immediately refund the payment amount including all fees deducted by us. This shall not apply:

(a) where your SWiM PAY Account, or its personalised security features, are lost, stolen or misappropriated;

(b) if you have acted fraudulently, in which case we will not refund you in any circumstances;

(c) if you do not quickly notify us of security issues on your SWiM PAY Account (e.g., loss of your password), you remain liable for losses incurred up to your notification to us;

(d) if the payment transaction was unauthorised but you have with intent or gross negligence compromised the security of your SWiM PAY Account or failed to comply with your obligations to use your SWiM PAY Account in the manner set out in this Agreement. In such a case you shall be solely liable for all losses; or

(e) if you don't let us know about the unauthorised or incorrectly completed transaction within 13 months from the date of the payment transaction.

**24.7 You are responsible for checking your SWiM PAY Account regularly.** We rely on you to regularly check the transactions history of your SWiM PAY Account and to contact Customer Support immediately in case you have any questions or concerns.

**24.8 We are not liable for things which are outside of our control.** We (and our affiliates) cannot be liable for our inability to deliver or delay as a result of things which are outside our control.

**24.9 You are liable for breaking this Agreement or applicable laws.** In the event of loss, claims, costs or expenses (including reasonable legal fees) arising out of your breach of this Agreement, any applicable law or regulation and/or your, or any authorised third parties', use of our Services, you agree to defend, compensate us and our affiliates and hold us harmless. This provision will continue after our relationship ends.

## **25. When We Can End This Agreement or Suspend Your Services**

**25.1 We may end this Agreement by giving you prior notice.** We may end this Agreement and close your SWiM PAY Account or any service associated with it by giving you prior notice.

**25.2 We may suspend or close your SWiM PAY Account without notice in certain circumstances.** We may at any time suspend or close your SWiM PAY Account and/or end this Agreement without notice if:

(a) you breach any provision of this Agreement or documents referred to in this Agreement;

(b) we are requested or directed to do so by any competent court of law, government authority, public agency, or law enforcement agency;

(c) we have reason to believe you are in breach of any applicable law or regulation; or

(d) we have reason to believe you are involved in any fraudulent activity, money laundering, terrorism financing or other criminal or illegal activity.

**25.3 We may suspend your SWiM PAY Account for security reasons.** We may suspend your SWiM PAY Account or restrict its functionality if we have reasonable concerns about:

1. the security of your SWiM PAY Account; or
2. suspected unauthorised or fraudulent use of your SWiM PAY Account.

**25.4 We will give you notice of suspension where possible.** We will give you prior notice of any suspension or restriction and the reasons for such suspension or restriction as soon as we can,

unless notifying you would be unlawful or compromise our reasonable security measures. We will lift the suspension and/or the restriction as soon as practicable after the reasons for the suspension and/or restriction have ceased to exist.

**25.5 You cannot use the Service if this Agreement ends.** On termination for any reason all rights granted to you in connection with the App shall cease.

## **26. Termination**

**26.1. Term and Termination:** This Agreement is effective upon the date you first access or use the Services and continues until terminated by you or SWiM PAY. You may terminate this Agreement by closing your SWiM PAY Account at any time. If you use the Services again or register for another SWiM PAY Account, you are consenting to this Agreement. We may terminate this Agreement or close your SWiM PAY Account at any time for any reason by providing you Notice. We may suspend your SWiM PAY Account and your ability to access funds in your SWiM PAY Account, or terminate this Agreement, if (i) we determine in our sole discretion that you are ineligible for the Services because of significant fraud or credit risk, or any other risks associated with your SWiM PAY Account; (ii) you use the Services in a prohibited manner or other ways which do not comply with any of the provisions of this Agreement; or (iii) any Law or Financial Services Provider requires us to do so.

**26.2. Effects of Termination:** Termination does not immediately relieve you of obligations incurred by you under this Agreement. Your continued or renewed use of the Services after all pending Transactions have been processed serves to renew your consent to the terms of this Agreement. If you terminate this Agreement, we will pay out any remaining funds owed to you.

In addition, upon termination you understand and agree that (i) all licences granted to you by SWiM PAY under this Agreement will end; (ii) we reserve the right (but have no obligation) to delete all of your information and account data stored on our servers within 10 days of termination; (iii) we will not be liable to you for compensation, reimbursement, or damages related to your use of the Services, or any termination or suspension of the Services or deletion of your information or account data; and (iv) you are still liable to us for any Fees or fines, or other financial obligation incurred by you or through your use of the Services prior to termination.

## **27. Other Important Terms**

**27.1 Nobody else has any rights under this Agreement.** This Agreement is between you and us. No other person shall have any rights to enforce any of its terms. Neither of us will need to get the agreement of any other person in order to end or make any changes to this Agreement.

**27.2 We may transfer this Agreement to someone else.** You may not transfer, assign, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of your rights and obligations under this Agreement (including the SWiM PAY Account) without



our prior written consent. We reserve the right to transfer, assign or novate this Agreement (including the SWiM PAY Account) or any right or obligation under this Agreement at any time without your consent. This does not affect your rights to close your SWiM PAY Account.

**27.3 If a court finds part of this Agreement illegal, the rest will continue in force.** Each of the paragraphs of this Agreement operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

**27.4 Even if we delay in enforcing this Agreement, we can still enforce it later.** If we delay in asking you to do certain things or in taking action, it will not prevent us taking steps against you at a later date.

**27.5 This Agreement supersedes any other previous agreements.** This Agreement supersedes and extinguishes all previous agreements between you and SWiM PAY, whether written or oral, relating to its subject matter.